

The National Committee for Employer Support of the Guard and Reserve

Major General Bob Hollingsworth, U.S. Marine Corps, Retired

THE National Committee for Employer Support of the Guard and Reserve (ESGR) helps members of the U.S. Army National Guard (ARNG) and Army Reserve (USAR) balance responsibilities to employers with military obligations. ESGR informs employers about the value of Reserve Component (RC) service to the national defense, recognizes employers who go above and beyond the legal requirement to accommodate employees who serve in ARNG and USAR units, and provides services to help resolve conflicts.

The History of Employer Support

In 1972, the United States adopted the Total Force policy, eliminated the draft, and began to rely completely on volunteer soldiers for national defense. A presidential proclamation established ESGR as a national committee under the control of the Office of the Secretary of Defense. Through ESGR, the Department of Defense (DOD) asked employers to support volunteer service in the Reserves by protecting volunteers' civilian employment while they performed military duties. In 1972, ARNG and USAR volunteers received the minimum training essential to allow them to enter military service in the event of a national emergency. For most citizen soldiers, this meant 1 weekend each month and 2 weeks of training a year, a commitment that was only a slight inconvenience to employers. At the time, the ESGR was a national board of respected business leaders who advocated employer support for volunteer RC service.

By 1978, ESGR had expanded to include a volunteer network of over 3,500 members in 54 committees implementing employer support programs in

communities in every state, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. Since the end of the Cold War in 1989, the Active Component (AC) has been reduced by almost 40 percent and the Reserve Component by 29 percent. An anticipated decrease in U.S. military deployments did not occur, however, causing a tenfold increase in reliance on Reserve Components and placing a much greater demand on employers.

In terms of manpower and force capability, Reserve Components are nearly half of the Total Force today. Because of the events of 11 September 2001, RC volunteers are spending even more time away from their workplaces to defend the Nation. Accordingly, ESGR has expanded its programs to include an Internet-based network to foster timely communication and partnership between ARNG and USAR members and their employers. The ESGR has strengthened its national program to support greater employer participation and developed an even stronger network of mediators, trainers, and community volunteers.

The ESGR Mission

ESGR's mission is to promote understanding of the ARNG and USAR and to gain employer and community support through programs, personnel policies, and practices that encourage employee service in the ARNG and USAR. DOD Directive 1250.1, "The National Committee for Employer Support of the Guard and Reserve," tasks ESGR with this mission.¹ ESGR's objectives are to—

- Help U.S. employers, employees, and communities understand and embrace the ARNG and USAR's vital roles in national defense.

□ Facilitate employers' voluntary compliance with federal and state statutes governing employment and reemployment rights of RC members.

□ Promote personnel policies and practices that accommodate and facilitate employee participation in the ARNG and USAR.

□ Encourage interaction and open communication between ARNG and USAR units and the civilian employers of their members.

□ Provide informal mediation services to help resolve misunderstandings and prevent or minimize conflicts between employers and reservists.

□ Assist in educating ARNG and USAR members about their obligations and responsibilities to their employers.

□ Support military chains of command in developing relationships with employers that minimize re-

servist-employer conflicts and improve retention.

□ Provide employer-relations training resources to military schools, command training programs, and military associations.

□ Promote civilian and military personnel management practices that encourage membership in the ARNG and USAR.

Leadership support. Good reservist-employer relations begin with the chains of command. ESGR helps RC leaders build ESGR-related programs into such critical areas as recruiting, retention, training, public affairs, family readiness, mobilization, and command channels. Military programs of instruction increasingly include employer support training to heighten awareness of ESGR and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Avoiding Job Conflicts

Reservists can avoid conflicts with employers by being candid about their Reserve Component (RC) obligations. They must keep their employers informed and not take their employers' support for granted. A reservist needs to inform his employer about the vital missions of the U.S. Army National Guard (ARNG) or U.S. Army Reserve (USAR) and explain that his military experience and training will help him become a more capable employee. In turn, the reservist needs to take time to recognize the sacrifices the employer and co-workers make when supporting him. Listed below are several strategies from the National Committee for Employer Support of the Guard and Reserve (ESGR) to keep the employer informed.

Talk to the employer. The reservist should share information about military assignments or specialties with an employer. Many reservists have military jobs that require skills directly related to their civilian careers. Reservists should let the employer know that they are learning and practicing skills in the military that enhance their value on the job. Reservists are using their spare time to participate in a second career that is important to the community and the Nation, and this says they are people who seek out, and can handle, serious responsibility.

Federal law. ARNG and USAR members and their employers do not always have a clear understanding about employment and reemployment rights for RC members. Federal law guarantees reservists the right to take time off from work to attend to military responsibilities. The more the reservist and the employer know about the federal laws and legal precedents that spell out RC reemployment rights, rules, and obligations, the less chance there is for misunderstanding.

Basically, the Uniformed Services Employment and Reemployment Rights Act (USERRA) requires that an employer give reservists time off to perform military service. After they return from service, the employer must

offer to reemploy them and provide them with the same status, seniority, and rate of pay they had before they left. The employer cannot discriminate against reservists because of their military affiliation. This protection applies to employees who are full-time, part-time, or probationary, so long as their employment was not brief, nonrecurring, or not expected to continue for a significant period.

Drill schedules. The earlier that reservists share with the employer information regarding drill schedules, annual training plans, reemployment rights and rules, and any extra time-off required, the better. Many units meet on the same weekend each month, except for holidays or annual training. If their units follow this pattern, reservists should let their employers know and give them advance notice of any other service, including drills, as early as possible when the reservist must be absent from work. When schedule changes occur, reservists should notify their employers as soon as they know about them.

Annual training schedules. The same rules apply for annual training (AT). Most units schedule annual training months in advance. Reservists should notify their employers as soon as they know their AT report dates. A change in orders can be more easily handled than an unplanned absence. If reservists will be part of an advance party or if annual training will exceed 2 weeks, reservists should ensure their employers know about it well in advance of AT report dates.

Extra training. When reservists need more training or they are to attend service schools, they should inform employers immediately. Giving employers the maximum leadtime helps them accommodate reservists' absences. To the extent that they have control over scheduling additional training, reservists should try to minimize any adverse effect their absences would cause. Reservists should show consideration for employers and co-workers when they volunteer for nonessential training.

Twenty-nine military schools in the seven service branches (the Army and Air Force National Guards, and the Army, Navy, Air Force, Marine Corps, and Coast Guard Reserves) have incorporated ESGR and USERRA training into their curricula and in conferences and workshops for senior leaders. Reserve Component policies, programs, and directives at all levels include employer support with at least 11 RC regulations, directives, and instructions containing ESGR guidance. ESGR programs at military schools and conferences teach reservists their rights and responsibilities under the law and who to contact if they have employer-related problems. The number of ESGR trained reservists has grown from 820 in 1999 to over 5,000 today.

ESGR website. ESGR maintains information about its programs and activities on the World Wide

Web, and many local ESGR committees have also developed similar websites.² The national website contains information of interest to employers, reservists, guardsmen, and committee members about ESGR programs and activities and USERRA. The site lists points of contact for each ESGR committee and for the national staff.

Reserve Component members may nominate employers for recognition through the ESGR on-line "My Boss is a Patriot" nomination form and register their employer in a national employer database.³ The ESGR website contains fact sheets, the text of the USERRA, ESGR public service advertisements, and links to other websites, such as those of the Office of the Assistant Secretary of Defense for Reserve Affairs, the Department of Labor, the Reserve Components, and ARNG and USAR associations.

Nontraining active duty. Many RC members perform tours of active duty ranging from short tours to support exercises or special projects to years of active duty in the Active Guard Reserve. Under USERRA, reservists must give advance notice of this type of duty to their employers. Most duty of this type is subject to a cumulative 5-year limit after which reservists no longer have reemployment rights under USERRA.

Emergency and contingency duty. Operations Desert Shield, Desert Storm, Uphold Democracy, Homeland Defense, Enduring Freedom, and Iraqi Freedom have required RC activation. If reservists are called to active duty in support of such emergency or contingency operations, their period of service will not count against the cumulative 5-year limit established under USERRA. In most cases, this includes voluntary duty in direct support of a contingency operation.

Scheduling. If reservists miss work while performing military service, employers are not obligated to reschedule the time lost. However, if employers give employees who miss work for nonmilitary reasons opportunity to make up the time lost, they must give reservists the same opportunity. Further, employers cannot require reservists to find replacement workers for the shifts they will miss in order to receive time off to perform military service.

Pay. Although some private and many government employers provide full or partial pay to employees absent on military duty (usually for a limited period of time) the law only requires an unpaid leave of absence.

Federal employee paid military leave. Most RC members, who are nontemporary employees of the federal government, including the U.S. Postal Service (USPS), accrue up to 15 days of paid leave per year. Employees (excluding USPS employees) who have unused accrued military leave at the end of a year may carry up to 15 days forward into the next year. Federal employees may use

their accrued military leave days to take time off from work for inactive duty training (drills).

Federal paid military leave is charged according to actual work schedule. For example, if a reservist normally works Monday through Friday and takes these days off for training, he or she is charged 5 days of military leave. Federal employees should refer to the provisions of *U.S. Code*, Title 5, "Government Organization and Employees," and agency regulations for additional information on paid military leave.¹

National Guard and RC members who are students. Federal law does not guarantee equal rights and protection to RC members enrolled in schools, colleges, or universities. Student RC members are not entitled to refunds of tuition and fees paid for school terms they cannot complete. There are no provisions for partial course credit or the right to return to a college or university after completing active service. However, the Servicemembers Opportunity Colleges (SOC) organization can intercede for members experiencing problems such as the loss of credit for school courses caused by a call-up.² Reservists who are students and who are called to active duty and have problems related to course credit, tuition, fees, or reenrollment in a program of study should contact SOC at 1-800-368-5622 or write to Servicemembers Opportunity Colleges, 1 Dupont Circle, NW, Suite 680, Washington, DC 20036. A representative from SOC will work with the student soldier and the institution to resolve problems. Commanders of RC units should make every effort to ensure reservists know help is available.

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1. *U.S. Code*, Title 5, "Government Organization and Employees," Part III—Employees, Subpart E—Attendance and Leave. See on-line at <www4.law.cornell.edu/uscode/5/>, accessed 31 March 2004.

2. See on-line at <www.soc.aascu.org/>, accessed 31 March 2004.

Mission One. The Mission One program provides training to RC members at their units during inactive duty training and during mobilization and demobilization processing. Trained ESGR volunteers are available to inform service members of their rights and responsibilities under the USERRA and answer questions about mobilization and its effect on civilian employment. ESGR volunteers also coordinate with the RC chains of command to identify and respond to employer support concerns.

Ombudsman services. The ESGR Ombudsman Services Program addresses employer concerns about the all-volunteer force. Some employers continue to regard service in the ARNG and USAR as an alternative to compulsory service and do not understand the necessity of such service in a purely voluntary military system. The Ombudsman Services Program also provides information, counseling, and informal mediation of disputes.

ESGR is not an enforcement agency and does not offer legal counsel or advice, but the Ombudsman Services Program provides information, informal mediation, and referral service to resolve employer-reservist conflicts. Trained ESGR ombudsmen are available to respond promptly to employees' or employers' requests for assistance.⁴ More than 95 percent of disputes relating to compliance with USERRA are resolved in this informal process. Many problems arise from poor communication or not knowing employer and employee rights and responsibilities under the law and are resolved without referral to the Department of Labor for investigation.

Bosslifts. Bosslifts transport employers and supervisors to military training sites to observe ARNG and USAR members on duty and to gain a better understanding of what reservists do when they report to their units. Bosslifts can help convince employers that the skills and leadership their employees gain through ARNG and USAR participation add value to their work force. Reservists can contact their state's ESGR committee to nominate employers for a bosslift.

Briefings with the Boss. The Briefings with the Boss program provides an informal forum in which employers, unit commanders, ESGR members, and community leaders meet to network and discuss issues that arise from employee service in the ARNG and USAR. Reserve units and commands often coordinate "employer days" with ESGR committees.

Public service advertising (PSA), fact sheets, and brochures. The PSA program partners with local broadcast and printed media entities to maximize the use of PSAs to promote the ESGR mission. Since 1972, ESGR has received more than \$1 billion in donated media placements as a result of its partnership with the Ad Council.⁵ The PSAs stress the importance of the ARNG and USAR in protecting America and highlight the benefits of employing reservists. The ESGR also produces and distributes fact sheets and brochures that provide information on ESGR, ESGR-sponsored programs and committees, and USERRA.

Statement of Support. The Statement of Support program asks employers to recognize reservists' vital role by signing a written pledge of support to reservist employees. The Secretary of Defense signs the certificate and the employer countersigns it. Employers who sign the statement pledge they will—

- Neither deny employment nor limit or reduce job opportunities because of service in the Reserves.

- Grant leaves of absences for military duty and training.

- Ensure all employees are aware of these policies.

Since 1998, more than 1,200 chambers of commerce representing more than 630,000 members have signed statements of support, as have professional trade organizations such as the Society for Human Resource Management and the National Association of Independent Businesses. Michael Dell, of Dell Incorporated, signed a statement of support, as did officials from the Xerox Corporation and the governors of more than 20 states.

Award and recognition programs. Members of the ARNG and USAR are eligible to nominate employers for the "My Boss is a Patriot" award. The Secretary of Defense gives the "Employer Support Freedom Award" annually to five employers who have demonstrated truly outstanding support to ARNG and USAR employees. ESGR committees in each state, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands also recognize supportive employers each year. **MR**

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1. Department of Defense Directive 1250.1, "National Committee for Employer Support of the Guard and Reserve," 13 April 1995. For more information, see on-line at <www.esgr.com/contents/contacts/PrivacyActForm.pdf>, accessed 30 March 2004.

2. See on-line at <www.esgr.org>.

3. The form is on-line at <www.njesgc.org/mbiaporm.html>, accessed 30 March 2004.

4. Ombudsmen can be reached at ESGR's toll-free number (1-800-336-4590) or at the ESGR website.

5. See on-line at <www.adcouncil.org/>, accessed 1 April 2004.

Uniformed Services Employment and Reemployment Rights Act

ENACTED IN October 1994 and updated in 1996, 1998, and 2000, the Uniformed Services Employment and Reemployment Rights Act (USERRA) provides reemployment protection and other benefits for veterans and employees who perform military service.¹ The Act sets forth the rights and responsibilities of U.S. National Guard (USNG) and U.S. Army Reserve (USAR) members, as well as their civilian employers. Significant changes from the pre-1994 law regarding military leave of absence include the following:

- An employee no longer requests permission to be absent for military leave but, rather, provides notification of pending military service.

- Specific rights and benefits are generally based on the duration, not the type of military service.

- Employers cannot require an employee to use earned vacation or similar leave days for a military leave of absence.

- Employers must count military service as time at work for all pension plans.²

Federal law. No state laws, policies, or practices that would diminish the rights that USERRA establishes take precedence over USERRA provisions. Conversely, USERRA does not supersede, nullify, or diminish any federal or state law or company policy, union agreement, practice, or contract that provides greater rights or benefits to service members.

Applicability. USERRA applies to all U.S. employers, regardless of the size of their business, and protects part-time and probationary positions unless the employment is for a brief, nonrecurring period and is not expected to last for a significant period of time. USERRA does not protect independent contractors and others considered as self-employed.

Definitions. *United States Code*, Title 38, Section 4303 contains a number of definitions that must be kept in mind.³ For example, the law protects persons who perform service in the uniformed services. “Service” means active or inactive duty under federal authority but does not include state call-ups of the Army or Air National Guard. The term “employer,” as it applies to ARNG technicians, refers to the adjutant general of the state. Thus, ARNG technicians, except dual-status federal technicians,

are considered to be state employees and, as such, do not have protection under USERRA. “Uniformed services” include the Active Component (AC) and Reserve Component (RC) of the Armed Forces, the Army, and the Air National Guard; the Commissioned Corps of the Public Health Service; and any other category of persons the president designates in time of war or emergency.

Discrimination. USERRA prohibits discrimination in hiring, reemployment, retention, promotions, or other benefits of employment against the employee because that person “is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service.”⁴ In addition, USERRA prohibits employers from taking reprisal against anyone who exercises his USERRA rights or anyone who assists in the exercise of those rights by testifying or otherwise participating in an investigation, even if that person has no connection to the military.

Eligibility. To qualify for reemployment rights following military service, the employee must meet the following five eligibility criteria:

1. The employee must have left a civilian job.
2. The employee must have given notice of leaving to perform military service. (There are exceptions.)
3. The cumulative period of service must not have exceeded 5 years. (There are exceptions.)
4. The employee must not have been released from service under dishonorable or other punitive conditions.
5. The employee must have reported back to work or applied for reemployment within the time limits the law prescribes.

Notice. Under USERRA, the employee (or an officer from the person’s command) must give the employer advance notice (either written or verbal) of pending military service of any type. Otherwise, the person will not be eligible for reemployment protection following the period of military service. The only exceptions to the notification requirement are if military necessity precludes the giving of notice (for example, a classified recall) or if it is otherwise impossible or unreasonable to give notice. These exceptions are rare. The best course of action is to give as much advance notice to employers as possible.

Five-year limit. USERRA sets a 5-year cumulative limit on the amount of military service that a reservist can perform and still retain reemployment rights with an employer. If the employee goes to work for a new employer, the 5-year time limit starts over.

There are some important exceptions to the 5-year limit. If the employee is unable to obtain release, or if the service is required to complete an initial period of obligated service, that time of service is exempt. For example, an initial enlistment might last more than 5 years, such as for nuclear power training. The employee would retain reinstatement rights with the employer. Drills (inactive duty training); annual training, involuntary active duty extensions, including training certified as necessary; and recalls because of a war or national emergency are not counted in the 5-year cumulative total.

Reemployment protection does not depend on the timing, frequency, duration, or nature of an individual's service. USERRA states that while employees are performing military service, they are deemed on a furlough or leave of absence and entitled to all those rights and benefits not determined by seniority and generally accorded other employees on nonmilitary leaves of absence.

If the same employer employed the employee before and after USERRA's effective date of 12 December 1994, duty performed before then will count against the USERRA 5-year limit, if the duty time counted against limits established in applicable pre-1994 laws.

Reemployment procedures. The type of military duty performed has no effect on being rehired. Reemployment procedures are based on the duration of service only. For periods of military service up to 30 days, the employee must report back to work at the next regularly scheduled shift on the day following release from the military, including safe travel home and 8 hours of rest. For longer periods of service, reinstatement is not necessarily immediate but should be within a matter of days or at most a couple of weeks. After a period of service of 31 to 180 days, the employee must apply for reemployment within 14 days following release. After 181 days or more, the employee must apply for reemployment within 90 days after release. If the employee is hospitalized for or convalescing from an illness or injury incurred in or aggravated during military service, the time allowed to report to work or apply for reemployment may be extended up to an additional 2 years. In applying for reemployment, the employee should identify himself and state that the employee left that employer to perform military service, that the employee has completed the service,

and that the employee wants to be reinstated. Failure to return to work or apply for reemployment within the specified time limit does not necessarily mean the employee forfeits reemployment rights. The employee will be subject to the employer's rules concerning unauthorized absence from work, however.

Reemployment position. Employers must reemploy employees returning from military service in the job that they would have attained had they not been absent for military service and with the same seniority, status, and pay, as well as other rights and benefits determined by seniority. Employers must make reasonable efforts to enable returning employees to refresh or upgrade their skills to enable them to qualify for reemployment. If refresher training is not successful, USERRA provides that the employer must place employees in a position that most nearly approximates the position that was originally held. If employees cannot become qualified through reasonable efforts, employees who are temporarily or permanently disabled because of military service must be accommodated in a position that most nearly approximates the position they would have attained had they not been absent for military service.

Reemployment entitlements. Following a period of military service, if employees meet eligibility criteria, they have a number of specific entitlements, including—

- Prompt reemployment.
- Seniority, seniority-related benefits (including pension), status, and rate of pay as if they were continuously employed during the military absence.
- Immediate reinstatement of health insurance for them and for previously covered dependents, with no waiting period and no exclusion of preexisting conditions, except conditions determined by the government to be service-connected.
- Training or retraining by the employer if necessary to qualify the employee for the reemployment.

If the employee is disabled while on military duty or a disability is aggravated by military service, the employer must make reasonable efforts to accommodate the disability. If the period of service was 181 days or more, the employee is protected from discharge, except for cause, for 1 year. If the service was for 31 to 180 days, the period of protection from discharge is 180 days.

Documentation. After a period of service of 31 days or more, the employee must provide documentation to the employer (if requested) that establishes that—

- His application for reemployment was timely.
- The employee had not exceeded the cumulative 5-year limit.



Rhode Island Guardsmen prepare to search a home believed to be the site of a weapons cache, Fallujah, Iraq, 17 July 2003.

□ The character of the service was honorable (that is, the employee did not receive a punitive type of discharge).

If the documentation is not readily available or does not exist, the employer cannot deny the employee reemployment. If documentation later becomes available that shows the employee did not qualify for reemployment, the employer can immediately terminate the employment. Suggested forms of documentation could include a DD Form 214, Report of Separation; endorsed orders; or a letter from the employee's command.⁵

Health care. If the period of service is 30 days or less, the employee pays the normal employee cost, if any, for continuation of employer-provided health insurance coverage. USERRA provides that the employee can elect to continue employer-provided health insurance for up to 18 months. If the period of service is 31 days or more, the employee could be required to pay up to 102 percent of the total premium. The employee is also entitled to rights and benefits not related to seniority that the employer generally offers to employees on nonmilitary leaves of absence (jury duty, for example).

Pensions. Under USERRA, all pension plans in which benefits are earned for length of service are protected.

Vacations. For a period of military service, the employee may elect to use accrued vacation time. The employer cannot require the employee to use

it, however. The employee does not accrue vacation time during a period of military service unless the employer provides this as a benefit for employees on a nonmilitary, nonpay leave of absence of similar duration.

Assistance and enforcement. If employees experience employment problems because of military obligations, they should first notify their commands. Often a commander or legal officer can provide prompt, effective assistance in resolving disputes between employees and civilian employers. If local efforts fail, they should contact Ombudsman Services at ESGR National Headquarters (1-800-336-4590 or DSN 426-1390/91 or on-line at <www.esgr.org>. **MR**

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1. See the USERRA on-line at <www.osc.gov/userra.htm>, accessed 29 March 2004.
2. Federal employees should review Title 5, *U.S. Code of Federal Regulations* 353.201 through 210 for further details. See on-line at <http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi? WAI SdclD=59198451059+0+0&WAI Saction=retrieve>, accessed 29 March 2004.
3. *U.S. Code*, Title 38, "Veterans' Benefits," on-line at <http://uscode.house.gov/title_38.htm>, accessed 29 March 2004.
4. See USERRA on-line.
5. See Department of Defense Form 214, "Certification of Release or Discharge From Active Duty," On-line at <www.acap.army.mil/transitioner/retiree/DDForm214.cfm>, accessed 29 March 2004.

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